that of the Legislature. But the court has the right and duty here, as in all other cases of police regulations, to examine the determination of the Legislature, and to declare it invalid if it goes beyond the limits of rationality. When it was held that the Legislature had the power to establish reasonable rates for railroad charges, it did not follow that it had power to fix any rate it pleased, reasonable or beyond the bounds of reason. And the question whether or not the Legislature had exceeded its power still remained for the court. It was supposed heretofore that the Minnesota case had established this very point. But the *dictum* in *Budd* v. *State of New York*, quoted above, at least throws doubt upon the subject.

RECENT CASES.

AGENCY — NEGLIGENCE OF VICE-PRINCIPAL. — A foreman in charge of laborers removing the roof of a railroad company's building is the vice-principal of the company, and not a fellow-servant of the laborers. *Sullivan* v. *Hannibal & St. J. Ry. Co.*, 17 S. W. Rep. 748 (Mo.).

BILLS AND NOTES — CO-MAKER AS SURETY — RATIFICATION OF MATERIAL ALTERATION. — Defendant, as surety for one T., signed a note as co-maker, payable to plaintiff. Afterwards, without the knowledge of defendant, one M. signed the note as an additional surety. Defendant heard subsequently of this alteration in the note, and assented to it, but received no new consideration for his assent. *Held*, in an action on the note, that this assent was a valid ratification, and bound him. *Owens* v. *Tague et al.*, 29 N. E. Rep. 784 (Ind.).

There is very little authority on this point. In favor of the principal case are 13 Iowa 567 and 21 Ill. 128 (*semble*); cf. also Brandt on Suretyship, § 384. But it is hard to see how the court reconcile this case with their previous language in *Henry* v. *Heeb*, 114 Ind. 275, where it was said that a forged signature on a note purporting to bind one H. as surety, could not be effectually ratified without a new consideration; cf. Daniels on Negot. Inst., §§ 1351, 1352 *a*. And on principle the case cannot be supported. The alteration in the note by adding a new party, being material, was a real and not a personal defence; it made the note void. In default of an implied agency, or of an estoppel, none of the original parties could revive his liability without a new valid contract.

BILLS AND NOTES — FAILURE OF CONSIDERATION NOTICE. — Defence of breach of warranty is of no avail against indorsee for value of a negotiable note, before due, who knew that the consideration for which the note was given was a jack, warranted to be a sure foal-getter, but having no knowledge until after transfer that the warranty failed. *Rublee* v. *Davis*, 51 N. W. Rep. 135 (Neb.).

BILLS AND NOTES — STATUTE OF LIMITATIONS. — S. made a note payable on demand to K., or order, dated Oct. 9, 1879. K. indorsed the note to the N. Bank as collateral security, and later it was indorsed to the plaintiff with K.'s consent as collateral for a debt due by K. to the plaintiff. S., the maker, not knowing of the transfer of the note by K., paid the note to K. by instalments, beginning in 1885 and ending in 1889. Plaintiff notified S. that he was the holder of the note, and S. pleaded the Statute of Limitations. The plaintiff relied on a payment in November, 1885, which K. had turned over to him, to defeat the plea. *Held*, an acknowledgment to a third party is not sufficient to take a debt out of the Statute. Here, as the defendant did not suppose that K. was the plaintiff's agent to receive this payment (as in fact he was not), the payment to K. was not an acknowledgment which would take the case out of the Statute. *The Stamford, S., and B. Banking Co., Ld.*, v. *Smith*, 92 L. T. 273 [Ct. of App. (Eng.)]

This decision seems to be inconsistent with the general English rule on the subject as laid down in Byles on Bills (14th ed.), p. 372. The learned author there refers to several cases in which an acknowledgment, or part payment of the debt by the obligor

to some party to the paper other than the holder, has been held to take the bill or note out of the Statute. In *Clark* v. *Hooper*, 10 Bing. 480, Chief Justice Tindal said that the effect of part payment to third persons (by reason of obligor's mistake as to who was his creditor), was as much an acknowledgment of the debt as if the debtor had written a letter saying that he would pay any one who could prove himself the rightful payee.

CIVIL SERVICE EXAMINATIONS — PROFESSIONAL EXPERTS. — The board of visiting physicians of a hospital are professional experts, and not employees, and are not, therefore, within the scope of a law requiring the latter to submit to competitive examination prior to appointment. *Commonwealth* v. *Fetter*, 23 Atl. Rep. 568 (Pa.).

CONSTITUTIONAL LAW — FOURTEENTH AMENDMENT — COVENANT PREJUDICIAL TO CHINESE. — A covenant in a deed not to convey or lease land to a Chinaman is void, as contrary to the public policy of the Government, in contravention of its treaty with China, and in violation of the Fourteenth Amendment of the Constitution, and is not enforceable in equity. *Gandolfo* v. *Hartman*, 49 Fed. Rep. 181 (Cal.).

That such a contract is contrary to the principles of the Constitution and to sound public policy, and that it should not be enforced by a court of equity, may be admitted. But while recognizing the correctness of the decision, we cannot accede to the reasoning of the learned judge. He considers this a violation of the Fourteenth Amendment, and says: "Any result inhibited by the Constitution can no more be accomplished by contract of individual citizens than by legislation, and the courts should no more enforce the one than the other." We cannot agree that the Fourteenth Amendment was aimed at individuals. See *Civil Rights Cases*, 109 U. S. 3. Nor do we see how the treaty with China helps the case. The true reason for the decision, and the one that undoubtedly weighed with the court, is that the contract is so opposed to public policy that equity should refuse specific performance.

CONSTITUTIONAL LAW — REPEAL BY SUBSEQUENT STATUTE. — Defendant was convicted of murder in the first degree, and sentenced in 1888. In 1891 a law was passed providing that executions should take place in the State's prison. *Held*, that the statute was *ex post facto* with regard to defendant, as applying a higher degree of punishment, and that as the law was intended to apply to all cases of murder, past as well as future, it was wholly unconstitutional and void, and the old law was still in force. *People* v. *McNulty*, 28 Pac. Rep. 816 (Cal.).

This case is the first one to hold that the old law was not repealed under such circumstances. The result reached is desirable, but it may be doubted how far the case will be followed.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — MUNICIPAL TAX ON TUG-BOATS. — A city ordinance of Chicago prohibits the employment of tug-boats in the river and harbor except when licensed by the city. *Held*, that this ordinance is not invalid, although the tug-boats are also licensed by the United States for the coasting trade, and although they are engaged in towing vessels themselves engaged in interstate commerce. The court say that the tugs are mainly used on the river, within the corporate limits of Chicago; that the navigation of the river has been improved by the city at its own expense; and that the license fee should be considered in the light of a toll for the use of the river in its improved condition. *Harmon* v. *City of Chicago*, 29 N. E. Rep. 732 (Ill.).

CONSTITUTIONAL LAW — POLICE POWER — MONOPOLIES. — A city ordinance gave the plaintiff the exclusive right to remove from the city all such dead animals as should not be removed by the owner in person, or by his immediate servant, within twelve hours after the death thereof. *Held*, a valid exercise of the police power, and the defendant will be restrained from removing any such animals. *Nat. Fertilizer Co.* v. *Lambert*, 48 Fed. Rep. 458 (Cal.).

CONSTITUTIONAL LAW — UNITED STATES SUPREME COURT FOLLOWING STATE DECISIONS — TERRITORY BECOMING A STATE. — When pending an appeal from a Territorial court to the United States Supreme Court upon a question of local law, the Territory is admitted as a State, and the State Supreme Court thereof, in another case, reaches an opposite conclusion upon the same question, the latter decision will be followed by the Supreme Court of the United States. *Stutsman County, Dak.* v. *Wallace*, 12 Sup. Ct. Rep. 227.

CORPORATIONS — CITIZENSHIP OF. — A corporation chartered by the State of Missouri was afterwards chartered by Arkansas. *Held*, the corporation may still be considered as a citizen of Missouri, and when sued by a citizen of Arkansas in the State

courts may have the suit removed to the Federal courts. *Stephens* v. *St. Louis & S. F. R. Co.*, 47 Fed. Rep. 530 (Ark.).

CONTRACTS — PUBLIC POLICY — RESTRAINT OF TRADE. — Certain stenographers, being only a small proportion of those engaged in the business in Chicago, formed an association to promote uniform rates. The members were allowed to cut prices against outsiders, but not among themselves. *Held*, in an action by one member against another for underbidding him, that the agreement was in restraint of trade and void. *More* v. *Bennett*, 29 N. E. Rep. 889 (Ill.).

The court distinguishes an agreement by the vendor of the good-will of a business not to interfere with his vendee by competition, which is enforceable as being in partial restraint of trade only, from all contracts, like the one above, which tend to stifle competition in general, no matter how limited their actual scope.

CORPORATIONS — BANKS — LIABILITY OF DIRECTORS. — The director of a bank whose services are gratuitous and whose duty it is to pass upon the transactions of the bank, does not owe to the creditors of the bank such care as a reasonable man exercises in the conduct of his own business, but is amenable only for fraud or for such negligence as amounts to fraud. *Sweutzel* v. *Penn. Bank*, 23 Atl. Rep. 405 (Pa.).

CORPORATIONS — CONSOLIDATION — FOREIGN AND DOMESTIC CORPORATIONS — ORGANIZATION TAX. — Laws 1869, c. 917, provide for the consolidation of corporations. Laws 1886, c. 431, require the payment of an organization tax from corporations incorporated under the laws of New York. The appellant was composed of domestic and foreign corporations consolidated under the first-mentioned laws. *Held*, that this was not a new incorporation under the laws of New York which would require the payment of the organization tax. *People* v. *New York C. & St. L. R. Co.*, 29 N. E. Rep. 959 (N. Y.).

While agreeing that the consolidation of domestic corporations under laws of 1869 would be a new incorporation, the court relied on the fact that here the consolidation was by foreign and domestic corporations. To effect the consolidation, the New York Statute alone would not be sufficient; it could be done only by the consent of all the States which had chartered the corporations proposing to consolidate. The new corporation then, arising from the consolidation, would not have been "incorporated by or under any general or special law of this State," within laws of 1886, c. 147.

CRIMINAL LAW — ATTEMPT TO COMMIT FELONY. — In a prosecution for an attempt to commit larceny, it appeared that the prisoners had put their hands into the pockets of certain persons, but there was no evidence that said persons had any property which the prisoners could have stolen. *Held*, it is not necessary, in an indictment for an attempt to commit a felony, to prove that the attempt would have succeeded if the attempt had not been frustrated; *i. e.*, to prove that larceny was possible here. *Reg.* v. *Ring*, 92 L. T. 296 [Cr. Cas. Res. (Eng.)].

This case overrules the former English doctrine as laid down in *Reg.* v. *Collins*, 9 Cox C. C. 497. The rule in *Reg.* v. *Ring* is that laid down in the Massachusetts case of *Com.* v. *M'Donald*, 5 Cush. 365.

ELECTRICITY — PRODUCTION OF, A MANUFACTURE. — A company engaged in producing electricity and supplying the same to its customers for lighting purposes is exempt from taxation under a New York statute which applies to "manufacturing corporations." *People ex rel. Brush Electric Illuminating Co.* v. *Wemple, Comptroller*, 29 N. E. Rep. 1002 (N. Y.).

See a dictum in accord in 22 Atl. Rep. 840, where the decision, turning on the construction of special Pennsylvania Statutes, went the other way. The same general line of argument might eventually lead the courts to say that tapping an electric wire was common law larceny.

EMINENT DOMAIN — DAMAGES. — Where a railroad company, having the power of eminent domain, enters upon land without the consent of the landowner, and without complying with the law regulating the exercise of such power, and constructs a railroad track thereon, *held*, that the value of the improvements thus put by the company on the land cannot be included in estimating the damage sustained by the landowner, in proceedings subsequently instituted under such law by the company in its legal successor, having similar power, to condemn the land, or an easement therein, to the company's use; and this, whether the company has been ousted from the former possession or not. *Jacksonville, T. & K. W. Ry. Co.* v. *Adams*, 10 So. Rep. 465 (Fla.).

The principle of this case, which is one of first impression in Florida, is affirmed in Mississippi, Michigan, Iowa, Illinois, Minnesota, Wisconsin, Oregon, Pennsylvania, and Alabama. The few cases which hold the contrary proceed upon a strict application of the rule of the common law, established when railroads were unknown, that

structures placed upon land by trespassers become part of the realty and cannot be removed.

EQUITY — INJUNCTION — ENTICEMENT FROM SERVICE. — An employer is not entitled to an injunction to restrain striking workmen from inducing others to leave his employ, as long as the strikers use no intimidation, and are actuated, not by malice, but by a desire of getting higher wages; nor will the court enjoin the publication of newspaper articles encouraging and approving the ends and methods of the strikers. *Rogers* v. *Evarts*, 17 N. Y. Supp. 264 (Supr. Ct.).

Lumley v. *Gye*, 2 El. & Bl. 216, decided that one who knowingly induces a person to break a contract of service is liable to the other party to the contract. The court says that such a doctrine is out of keeping with modern civilization, and that it is a matter of grave doubt whether it would be followed in New York.

EQUITY — INJUNCTION — POLLUTION OF STREAM. — A riparian owner is entitled to an injunction against the daily befouling and discoloration of a stream by the discharge of dyes from a plush factory, although such discharge is necessary to the convenient and successful use of the factory, and causes no actual damage. *Townsend* v. *Bell*, 17 N. Y. Supp. 210 (Supr. Ct.).

The pouring of foreign matter into the stream is distinguished by the court from the abstraction of water from it, and is held actionable, like a trespass, without actual damage.

EVIDENCE — PAROL — CONTRACT IN WRITING. — A certificate of deposit issued by a bank made no mention of interest; but there was an oral promise to pay interest, and the cashier made a memorandum of the agreement. *Held*, this may be read with the certificate as evidence of the entire contract. *Thomas* v. *Beal*, 48 Fed. Rep. 614 (Mass.).

This seems at variance with the rule that parol evidence cannot be introduced to vary the terms of a written contract. The certificate itself being the contract, anything extrinsic would seem to come within the rule.

EVIDENCE — VIEW OF PREMISES. — In an action for negligence, the court sent the jury to view the premises. *Held*, the instruction "that the only purpose of this examination is to aid you in determining the issue with the other evidence in the case," was erroneous. The jury should not use their own observation as evidence even if it convince them of a fact which the testimony fails to prove. *Morrison* v. *Burlington C. R. & N. Ry. Co.*, 51 N. W. Rep. 75 (Iowa).

Topeka v. *Martineau*, 42 Kans. 387, expresses the better opinion, to the effect that the knowledge acquired by the jury at the view is to be used like any other evidence in the case.

HUSBAND AND WIFE — NATURE OF ALIMONY — RIGHTS OF FORMER CREDITOR OF WIFE. — The right against a husband to alimony, granted by the court to a divorced wife, cannot be attached by a creditor for a debt contracted by the wife before the decree of alimony was issued. *Romaine* v. *Chauncey*, 29 N. E. Rep. 827 (N. Y.).

This point seems not to be covered by any authority. It is decided on the ground that a wife's right against her husband for maintenance and support cannot be attached while the marriage relation lasts, and that alimony is, in theory, a continuance of the same right.

MUNICIPAL CORPORATIONS — COUNTY BONDS — ESTOPPEL BY RECITALS. — Bonds were issued reciting that the Act under which they had been issued had been fully complied with, that the issue was authorized by a majority vote, and that the whole amount of the issue did not exceed the limit of indebtedness prescribed by the constitution. *Held*, that, as against a *bona fide* holder, the county was estopped by the recitals from questioning the validity of the bonds, on the ground that the percentage of indebtedness allowed by the Constitution was exceeded. *Dixon Co.* v. *Field*, 111 U. S. 83, and *Lake Co.* v. *Graham*, 130 U. S. 674, distinguished on the ground that in those cases enough appeared in the bonds to put a purchaser on inquiry, when he would have found that the constitutional limit of indebtedness had been exceeded, while here nothing of the kind appeared in the bonds. (Gray, J., dissented.) *Board of County Com'rs of Chaffee Co.* v. *Potter*, 12 Sup. Ct. Rep. 216.

See on the same question, though there the purchasers had actual knowledge, *Dist. Township of Doon, Lyon Co. (Ia.)* v. *Cummins*, 12 Sup. Ct. Rep. 220.

The above decisions carry the doctrine of estoppel by recitals in county bonds somewhat farther than any prior decisions have done. It seems to be going rather far to estop the county from setting up the fact that the constitutional limit of indebtedness has been passed, even though the purchaser has been necessarily deceived by the recitals; yet that is the doctrine which now has the approval of the Supreme Court.

NEGLIGENCE — LICENSE — DANGEROUS PREMISES. — The fact that a private way

opening on a public street is paved, and to all appearances a public street, is not an invitation to the public to enter. Defendant, the owner of the way, is not liable to strangers entering thereon without permission. *Nichols* v. *Stevens*, 29 N. E. Rep. 1150 (Mass.).

The doctrine of implied license has been carried to its extreme in Massachusetts. This case seems to mark a halt. The court attempts to distinguish *Holmes* v. *Drew*, 25 N. E. Rep. 22 (Mass.).

PERSONAL PROPERTY — RIGHTS OF FINDER — LOSS OF LIEN BY JUDGMENT. — When the owner of lost property offers a reward for its discovery and return, *held*, that the finder is entitled to possession of the property as security for payment of the reward, and that this lien is not lost because the finder has recovered a judgment, as yet unsatisfied, for the amount of the reward. *Semble*, that the same rule holds in regard to a pledgee's lien. *Everman* v. *Hyman*, 29 N. E. Rep. 1140 (Ind.).

The first point illustrates the spread of a growing, but far from universal, doctrine. Massachusetts, Pennsylvania, and three other States agree. On the second point the courts follow the trend of what little recent authority there is. But see Story on Bailment (7th ed.), § 361, *contra*.

REAL PROPERTY — SERVITUDES — USE OF ELECTRICITY AS A MOTIVE POWER. — The use of electricity for propelling street cars does not impose upon the streets a new servitude so as to entitle abutting owners to additional compensation, and the grant of such privilege is fully within the powers of the city council. *Koch* v. *North Avenue Ry. Co.*, 23 Atl. Rep. 463 (Md.).

This case is one of first impression, bringing Maryland in line with the recent decisions in a number of other States.

REAL PROPERTY — DEFECTIVE TITLE — PARTY-WALLS. — A contract of sale of a city lot stated that the northerly wall of the building on the lot was a party-wall, but said nothing about the southerly wall, which was also a party-wall. There was an agreement to give title free from incumbrances. *Held*, the purchaser was warranted in rejecting the title, because the silence of the contract about the southerly wall amounted to a representation that it was not a party-wall. *O'Neill* v. *Van Tassell*, 17 N. Y. Supp. 824 (Supr. Ct.).

The court distinguishes the case of *Hendricks* v. *Stark*, 37 N. Y. 106, where it was held that a purchaser who signed a contract of sale which said nothing about party-walls could not reject the title for the reason that the walls were party-walls, party-walls with their reciprocal easements being a benefit rather than a burden.

REAL PROPERTY — ELEVATED RAILROADS — NATURE OF QUASI-EASEMENTS TO ACCESS, LIGHT, AND AIR. — Where the operation of defendant's railroad has on the whole not lessened the value of plaintiff's land, plaintiff has no action for the disturbance of his right to light, air, and access from the street considered separately. *Bohm et al.* v. *Metropolitan Elevated R. R. Co.*, 29 N. E. Rep. 802 (N. Y.).

This case seems to show where the New York court mean to stop, and also illustrates the difference between real easements and the so-called quasi-easements, the former of which are, while the latter are not, absolute rights. It is obvious that if A has a right of way over B's premises, and B obstructs that right of way, it is no answer to A's action that B's obstruction has otherwise benefited A's land. With the quasi-easements, as in the principal case, it is otherwise.

RELEASE OF POWER OF APPOINTMENT — RIGHT OF CESTUI TO A CONVEYANCE OF TRUST PROPERTY. — A father, who was tenant for life under his marriage settlement, had power to appoint among his children the interest in remainder, and in default of appointment the fund was to go to all the children equally, the shares to be vested at twenty-one or marriage. There were issue of the marriage, three sons, and then the wife died. One of the sons died an infant; the other two attained twenty-one; but one of them died a bachelor and intestate. The father took out administration to the last-mentioned son, and executed a deed releasing his power of appointment, and then took out a summons calling on the trustee to transfer one moiety of the personal trust-estate to him. *Held*, (1) that the release of the power was valid, and that the father was entitled to the son's reversionary interest as his administrator; (2) that inasmuch as the father's life interest and the son's reversion were held by the father in different rights, there was no merger, and that so long as the father's life interest subsisted, to give him the legal estate would be merely a substitution of trustees, which the court would not decree; but (3) that on the father's executing a surrender of his life interest, he was entitled to have a moiety of the fund transfered to him. Decree that on the plaintiff's undertaking to surrender his life interest in one moiety of the personal estate, the trustee should convey to him. *In re Radcliffe-Radcliffe* v. *Burns* [1892], 1 Ch. 227.

Smith v. *Houblon*, 26 Beav. 482, followed; *Cunynghame* v. *Thurlow*, 1 Russ. & My. 436, *n.*, not followed.

SALE OF CHATTELS — PORTION OF A MASS. — Where a certain number of barrels are sold out of a greater number of exactly the same kind and quality, with intention that title should presently pass, and where the vendee has absolute right at any time to take the number contracted for out of the whole, title passes to the vendee, though the specific articles are not actually designated or separated from the rest. *Mackellar* v. *Pillsbury*, 51 N. W. Rep. 222 (Minn.).

STATUTE OF LIMITATIONS — FRAUD AS A BAR. — The Statute of Limitations does not begin to run while plaintiff's cause of action is concealed from him by the fraud of the defendant. *Reynolds* v. *Hennessy*, 23 Atl. Rep. 639 (R. I.).

This doctrine, though generally enforced in equity, is not usually enforced at law.

SOLICITOR'S LIEN — PARTITION ACTION. — Where in a partition action the plaintiff has changed his solicitor, the old solicitor may be ordered to deliver up papers, come to his hands for the purposes of the action, to the new solicitor, to be held by the latter subject to the lien of the former, and to be returned when the judge shall direct. This is because, although the plaintiff and the defendant are apparently the only parties interested, there may be third parties interested as incumbrancers, so that the same reason exists for such an order as in an administration action. *Boden v. Hensby* [1892], 1 Ch. 101 (Eng.).

TELEGRAPH COMPANIES — NON-DELIVERY OF MESSAGES — MEASURE OF DAMAGES. — Plaintiff, anticipating a heavy decline in the market price of certain corporate stock, and desiring to speculate in the same by selling on the exchange before the decline began, and thereafter purchasing at a lower figure, delivered to defendant company the following message, addressed to his brokers: "Sell 200 Tennessee Coal and Iron." The message was negligently delayed, and not delivered until eight days later, during which time the stock had dropped from $73 to $35 per share. Plaintiff, in fact, had no stock to sell, but kept with his brokers securities, on the strength of which they would have sold the stock on exchange, and bought again on plaintiff's order. *Held*, in an action against the telegraph company to recover the difference in price between the stock at the time the message should have been delivered, and the time it actually was delivered, that the damages were too remote, uncertain, and speculative, and there could be no recovery therefor. *Cahn* v. *Western Union Tel. Co.*, 48 Fed. Rep. 810 (Miss.).

This decision seems contrary to the weight of authority, since the face of the despatch was such as to disclose the nature of the business and the importance of promptitude in transmission and delivery. See 55 Penn. St. R. 262; 13 Cal. 422; 98 Mass. 232; 60 Me. 9; 44 N. Y. 263; 37 Ia. 214; 68 Ga. 299; Thompson on Electricity, § 335 *et seq.*; Scott and Yarnagin, § 389 *et seq.*; Gray on Communication by Telegraph, §§ 85, 86. *W. U. Tel. Co.* v. *Hall*, 124 U. S. 444, is cited as authority for the position taken by the court in Cahn's case; but in *W. U. Tel. Co.* v. *Hall* it was not disclosed in the record whether, between the time the telegram should have been delivered and the time of bringing the action, the price of oil had advanced or receded from the price at the date of the intended purchase.

TORT — NEGLIGENCE — REPRESENTATIONS. — The plaintiffs owned a steam vessel which was unloading in a dock which was part of a harbor belonging to the defendants. The propeller of the plaintiffs' vessel became befouled so that it was necessary to dry-dock the vessel. The defendants' harbor-master represented to the captain that he could safely beach his ship in a lock connecting with the dock where she was unloading. The captain, relying upon this representation, did beach his ship there, and she was seriously injured in consequence of an inequality in the bottom of which the harbor-master knew, or ought to have known. Apparently the defendants were to receive no extra compensation for this use of the lock. The lock had been but rarely used for such a purpose. *Held*, that the harbor-master's representation amounted to something more than a mere license, and that he had been guilty of negligence for which the defendants were liable. *Little* v. *Port Talbot Co.* [1891], A. C. 499 (Eng.).

TORT — NUISANCE. — The plaintiffs moved for an injunction to restrain the defendant company from so using its machinery as, by vibration, noise, etc., to injure the plaintiffs' property. The defendant had used the boundary wall between its premises and those of the plaintiff as part of the wall of their engine-house. This wall was within twenty feet of the plaintiffs' building. An engineer reported that by removing the power house a short distance the nuisance would be diminished, but that the proposed site would be less convenient. The defendant was empowered to work its road by electricity. The court found that a serious nuisance was caused to the plaintiffs.

Held, the defendant was to choose a site, and having chosen this as the most convenient, could not be compelled to remove. *Allison* v. *C. & S. L. Ry. Co.*, 92 L. T. 313 (Eng. Ch. Div.)

The decision seems unsound, inasmuch as the site chosen for the exercise of a trade is a *convenient* one only when it is carried on where no injury results to others from it. *Tipping* v. *St. Helen Smelting Co.*, 11 H. L. Cas, 642; *Bamford* v. *Turnley*, 3 B. & S. 62 (overruling *Hole* v. *Barlow*, 4 C. B. N. S. 334). In prosecutions or actions for nuisances, the courts will not balance conveniences; but when the right and its violation are clear, there can be no excuse urged that would protect the person or corporation that causes the injury from all the consequences, civil or criminal. *The Attorney-General* v. *Leeds*, 39 L. J. 354; *Stockport Waterworks Co.* v. *Potter*, 7 H. & N. 167; *Pinckney* v. *Ewens*, 3 L. T. N. S. 741.

TRUSTS — PROCEEDS FROM COLLECTION OF DRAFT. — A bank received a draft for collection, with directions to remit the proceeds to a third bank. Collection was made, but proceeds were not remitted. After a few days a receiver was appointed for collecting bank. *Held*, he cannot be charged as trustee. *Merchants' & Farmers' Bank* v. *Austin*, 48 Fed. Rep. 25 (Ala.)

TRUST — STATUTE OF LIMITATIONS — A debt secured by a deed of trust is barred by the Statute of Limitations. *Held*, that if trustee refuses to exercise his power of sale, court would not appoint a substitute trustee, as that would amount to enforcing a barred debt. *Fuller* v. *Oneal*, 18 S. W. Rep. 479 (Texas).

The decision seems unsound, as it would allow the trustee to keep the property, since the debtor could not compel a reconveyance, the debt not having been paid. In case of a debt secured by a trust, there is no limitation as regards time to the lien of the debt short of a presumption of payment from lapse of time. Angell on Limitations, § 468; 8 Watt, 504.

A CORRECTION.

PARTNERSHIP — RIGHTS OF RETIRING PARTNERS. — In commenting on the case of *Williams* v. *Farrand*, 50 N. W. Rep. 446 (Mich.), which related to the rights of retiring partners, we were in error in supposing that the case was opposed to the present English law. It is opposed to the doctrine of *Labouchere* v. *Dawson*, L. R. 13 Eq. 322, but that case had been practically overruled by *Pearson* v. *Pearson*, 27 Ch. Div. 145, and *Vernon* v. *Hallam*, 34 Ch. D. 748. And see Lindley on Partnership, p. 440. It may be added that the doctrine of *Labouchere* v. *Dawson* has much to recommend it, and it was overthrown by only a majority of the court.

REVIEW.

A TREATISE ON THE LAW RELATING TO PUBLIC OFFICERS AND SURETIES IN OFFICIAL BONDS, by Montgomery H. Throop. New York: The J. T. Johnson Co., 1892. pp. clxxix and 963.

This book cannot but prove of great value to the practising lawyer. "It aims to collect, arrange in a logical and convenient form, apply, and comment upon the general rules of law relating to all public officers, from the highest to the lowest, and sureties in their official bonds, as found in the adjudications of the courts in England and in this country." It has accomplished its avowed purpose. It contains a thorough and careful treatment of the subject, dealing rather with general principles than with local law, and has an exhaustive collection of cases. A book such as this, which brings into a comparatively small compass and arranges in a convenient form all the authorities on a certain branch of the law, is a most valuable aid to the lawyer.

Its usefulness is increased by a most admirable arrangement. In addition to the Table of Contents, Index, and Table of Cases, it contains a carefully prepared Analysis, which will materially help the reader.

The work of the publishers is admirably done. The book will be found to be an attractive as well as a useful addition to the lawyer's library.